

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH J. STOLLE
and LEE R. BECK

Appeal No. 94-3539
Application 07/655,812¹

HEARD: February 3, 1997

Before GRON, WEIFFENBACH, and ELLIS, *Administrative Patent Judges*.

GRON, *Administrative Patent Judge*.

DECISION ON APPEAL UNDER 35 U.S.C. § 134

¹ Application for patent filed February 15, 1991. According to applicants, this application is a division of Application 07/001,842, filed January 9, 1987, now abandoned; which is a continuation-in-part of Application 06/546,162, filed October 27, 1983, now U.S. Patent No. 4,636,384, issued January 13, 1987; which is a continuation-in-part of Application 06/384,625, filed June 3, 1982, now abandoned. Application 07/001,842 also is a continuation-in-part of Application 06/622,130, filed June 19, 1984, now U.S. Patent No. 4,748,018, issued May 31, 1988; which is a continuation-in-part of Application 06/577,804, filed February 7, 1984, now abandoned.

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This is an appeal of an examiner's final rejections of Claims 25 to 38, all claims pending in this application.

Claims 25 to 38 stand rejected for obviousness-type double patenting of Claims 1, 8, and 13 of Stolle et al., U.S. 4,636,384, patented January 13, 1987, in view of any one of Polson, U.S. 4,550,019, patented October 29, 1985 (filed July 16, 1982), Polson, U.S. 4,357,272, patented November 2, 1982 (filed March 15, 1979), Polson et al., "Isolation of Viral IgY Antibodies from Yolks of Immunized Hens," *Immunological Communications*, Vol. 9, No. 5, pp. 475-493 (1980), and Polson et al., "Antibodies to Proteins from Yolk of Immunized Hens," *Immunological Communications*, Vol. 9, No. 5, pp. 495-514 (1980).

Claims 25 to 38 stand rejected under 35 U.S.C. § 103 as unpatentable over either Beck, U.S. 4,324,782, patented April 13, 1982, or Beck, U.S. 4,284,623, patented August 18, 1981, in view of any one of the above-cited Polson references.

Claims 25 and 27 to 38 stand rejected under 35 U.S.C. § 103 as unpatentable in view of Nissen, U.S. 4,764,531, patented August 16, 1988 (filed March 11, 1986).

Having considered appellants' briefs, the examiner's answers, this specification and those of the applications from which it continues-in-part, the claims on appeal and the subject matter claimed in the patents issued from parent and grandparent applications, the cited prior art, all secondary evidence of record pertaining to patentability of the subject matter claimed, and the prosecution history, we reverse the examiner's rejections in their entirety. The greater weight of factual evidence of record and more convincing arguments support the patentability of the claimed subject matter. Rather than confront the evidence and appellants' arguments head on, the examiner resets the basis for her conclusion that the claimed subject matter is unpatentable in this case in the fact-specific holding of In re Durden, 763 F.2d 1406, 226 USPQ 359 (Fed. Cir. 1985). We will not grace this myopic view of patentability under 35 U.S.C. § 103 with further comment. We reverse.²

REVERSED

² While the examiner compared the subject matter claimed in this case to the subject matter claimed in U.S. 4,636,384 for obviousness-type double patenting, it is not clear from this record that the subject matter claimed in this case has been compared to the subject matter claimed in Stolle et al., U.S. 4,748,018, which issued May 31, 1988, from co-parent Application 06/622,130, filed June 19, 1984.

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TEDDY S. GRON)
Administrative Patent Judge)
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CAMERON WEIFFENBACH)
Administrative Patent Judge)
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JOAN ELLIS)
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BOARD OF PATENT
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